

**KENTUCKY PERSONNEL BOARD  
MINUTES OF MARCH 8, 2019**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chair Crall on March 8, 2019, at approximately 9:30 a.m., at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky.

Board Personnel Present:

Brian J. Crall, Chair  
Mark O. Haines, Vice Chair  
Beverly H. Griffith, Member  
William J. Byrley, Member  
Catherine J. Monteiro, Member  
Richard M. Waite II, Member  
Tanya Lawrence, Member  
Mark A. Sipek, Executive Director and Secretary  
Stafford Easterling, General Counsel  
Cynthia Perkins, Administrative Section Supervisor  
Gwen McDonald, Administrative Specialist

Board photographs were taken immediately prior to the start of the meeting.

2. **READING OF THE MINUTES OF THE REGULAR MEETING HELD FEBRUARY 8, 2019.**

The minutes of the last Board meeting had been previously circulated among the members. Chair Crall asked for additions or corrections. Mr. Waite moved to approve the minutes as submitted. Ms. Monteiro seconded and the motion carried 6-0. The Board members signed the minutes.

(Chair Crall does not vote, unless noted.)

3. **EXECUTIVE DIRECTOR AND SECRETARY'S REPORT**

Mr. Sipek stated that staff are working on various matters, including appeals and investigations. Staff has also been working on a Motion for Discretionary Review in the *Kellie Lang* case. The Board meeting agenda for April 2019 is potentially longer than average, with three oral arguments already scheduled.

#### **4. REPORT OF THE PERSONNEL CABINET**

Rosemary Holbrook, General Counsel, and Mary Elizabeth Bailey, Commissioner of the Department of Human Resource Administration, were present for the Personnel Cabinet. Ms. Holbrook discussed two amended regulations the Cabinet was very excited about:

101 KAR 2:034, Classified Compensation Administrative Regulations

101 KAR 3:045, Compensation Plan and Pay Incentives for the Unclassified Service

Some of the changes include clarification of the compensation regulations for the classified and unclassified service and the creation of a "critical position" premium.

Ms. Holbrook handed out new drafts of the proposed regulation changes to the Board, because there had been a minor change after the proposed changes were initially emailed to the Board.

Chair Crall asked for an explanation of the critical position premium as it relates to the number of positions allowed in a department or office. Secretary Stephens explained that this regulation would allow a premium for a position which, if vacated, would critically impact the office or department, i.e. an information technology position which deals with a computer system no longer compatible or currently in use by the state. Ms. Bailey clarified that the number of positions eligible for this premium would depend upon the actual number of positions held in the office or department, but each office or department would be allowed to recommend at least one position for consideration. However, the premium is not guaranteed -- the recommendation must be justified and submitted to the secretary for approval. Ms. Holbrook stated that the changes made to 101 KAR 3:045 are pretty much the same changes as were proposed in 101 KAR 2:034.

Mr. Waite questioned whether the regulation change in 101 KAR 2:034, Section 1(b), would allow people who work in the same building and for the same cabinet or agency, but in different departments or offices, to have vastly different salaries. Ms. Holbrook stated that this adjustment will help some positions, but not others, due to considerations of different workloads and job demands. Ms. Bailey stated that differences in education and/or experience would also allow for differences in pay rates across agencies or cabinets.

Mr. Byrley moved to approve the regulations as amended by the Personnel Cabinet. Mr. Waite seconded and the motion carried 6-0.

#### **5. PETITIONED POSITIONS**

##### **A. Special Assistant**

Public Protection Cabinet

Department of Alcoholic Beverage Control

Ms. Carol Beth Martin, Malt Beverage Administrator for the Department of Alcoholic Beverage Control, and the Hon. Carmine Iaccarino, Executive Director of the Public Protection Cabinet's Office of Legal Services, were present and briefly discussed the responsibilities of the non-merit position.

Ms. Griffith moved to approve the non-merit Special Assistant position with the Public Protection Cabinet, Department of Alcoholic Beverage Control. Ms. Lawrence seconded and the motion carried 6-0.

Mr. Sipek congratulated Mr. Iaccarino on his work on the *Secretary of State v. Jared Dearing and Jennifer Scutchfield* case.

B. Executive Advisor  
Justice and Public Safety Cabinet  
Department of Criminal Justice Training

Ms. Tina Moss, Staff Assistant for the Department of Criminal Justice Training, was present to discuss the new position and its responsibilities related to mental health issues for law enforcement.

Ms. Monteiro moved to approve the unclassified Executive Advisor position with the Justice and Public Safety Cabinet, Department of Criminal Justice Training. Mr. Waite seconded and the motion carried 6-0.

6. **ORAL ARGUMENTS**

A. **Ralph Crawford v. Energy and Environment Cabinet (2018-098)**  
(Appellant's Request)  
**Moved from February**

Present for oral arguments were the Appellant, Ralph Crawford, and counsel for the Appellee, the Hon. Erritt Griggs.

B. **Christina Haltom v. Tourism, Arts and Heritage Cabinet/Department of Parks (2018-138)**  
(Appellee's Request)

Present for oral argument were the Appellant, Christina Haltom, and counsel for the Appellee, the Hon. William Adams.

**7. CLOSED SESSION/RETURN TO OPEN SESSION**

Mr. Haines moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Mr. Waite seconded. Chair Crall stated that a motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. [Pursuant to KRS 61.810(1)(c), (j) and (k), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; specifically, *Finance and Administration Cabinet and Personnel Cabinet v. Kellie Lang and Personnel Board*; and deliberations regarding individual adjudications as listed on the Board's Agenda for today's meeting.]

This closed session will also consider matters mandated by KRS 11A.080 and KRS 11A.110(1) to be kept confidential, which comports with the exception found in KRS 61.810(1)(k). (10:18 a.m.)

Ms. Monteiro moved to return to open session. Ms. Lawrence seconded and the motion passed by acclamation. (11:33 a.m.)

Chair Crall requested someone from the Personnel Cabinet come to the next Board meeting and discuss how ADA matters are handled within state agencies. He realizes that issues arise frequently, especially questions relating to what the agency knew about the disability and how the Board shall address the issue if it was not made known to the agency. Chair Crall felt the Board needs discussion and direction to clear up these issues. Ms. Lawrence opined that Donna Shelton, Executive Director of the Office of Employee Relations, would be able to give guidance on these matters.

**8. CASES TO BE DECIDED**

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments, where applicable.

- A. John Shields v. Justice and Public Safety Cabinet/Corrections (2017-236)**  
**Deferred to March**

Ms. Griffith, having considered the record, including Appellant's exceptions, Appellee's response, and oral arguments, moved to accept the final order dismissing the appeal, as attached to the minutes. Mr. Waite seconded and the motion carried 6-0.

**B. Ralph Crawford v. Energy and Environment Cabinet (2018-098)**  
**Moved from February**

Mr. Haines, having considered the record, including Appellant's exceptions and oral arguments, moved to accept the recommended order dismissing the appeal. Ms. Lawrence seconded and the motion carried 6-0.

**C. Christina Haltom v. Tourism, Arts and Heritage Cabinet/Department of Parks (2018-138)**

Ms. Monteiro, having considered the record, including Appellee's exceptions, Appellant's response, and oral arguments, moved to defer this matter and refer the parties to mediation. Mr. Waite seconded and the motion carried 6-0.

~~**D. Rodney Milburn v. Tourism, Arts and Heritage Cabinet/Fish and Wildlife Resources (2018-042 and 2018-130) (2 appeals)**~~  
**Oral Argument Deferred to April**

**E. Oda Barnes v. Cabinet for Health and Family Services (2018-107)**

Ms. Griffith, having considered the record, moved to accept the recommended order sustaining the appeal. Mr. Waite seconded and the motion carried 6-0.

**F. Joe Miller v. Justice and Public Safety Cabinet/Corrections (2017-157)**

Mr. Waite, having considered the record, including Appellee's exceptions and Appellant's exceptions, moved to defer this matter and ordered the parties participate in oral arguments before the Board. Ms. Lawrence seconded and the motion carried 5-0, with Mr. Haines abstaining.

**Show Cause Orders – No Response Filed – Appeals Dismissed**

Ms. Lawrence moved to accept the recommended orders *en bloc* and to dismiss the appeals for failure to timely prosecute the appeals. Ms. Monteiro seconded and the motion carried 6-0.

**G. Denise Cason v. Cabinet for Health and Family Services (2018-226)**

- H. Aaron Rogers v. Justice and Public Safety Cabinet/Corrections (2018-232)

**9. WITHDRAWALS**

Ms. Griffith moved to accept the following withdrawals *en bloc* and to dismiss the appeals. Mr. Haines seconded and the motion carried 6-0.

- A. Kasandra Dandy v. Justice and Public Safety Cabinet/Juvenile Justice (2018-203)
- B. Mark Douglas v. Justice and Public Safety Cabinet/Corrections (2018-235)
- C. Jonathan Pressacco v. Justice and Public Safety Cabinet/Corrections (2018-204)
- D. Richard Skaggs v. Tourism, Arts and Heritage Cabinet/Fish & Wildlife (2018-058)
- E. Claudette Taylor v. Justice and Public Safety Cabinet/Corrections, Cabinet for Health and Family Services, & Personnel Cabinet (2018-237)
- F. William R. Turner v. Tourism, Arts and Heritage Cabinet/Parks (2018-056)
- G. Jessica Durrett v. Justice and Public Safety Cabinet/Corrections (2018-116)
- H. Michael Durrett v. Justice and Public Safety Cabinet/Corrections (2018-117)
- I. Angela Stewart v. Public Protection Cabinet (2018-241)

**10. SETTLEMENTS**

Ms. Monteiro moved to issue settlement orders and to sustain the appeals *en bloc* to the extent set forth in the settlements as submitted by the parties. Mr. Byrley seconded and the motion carried 6-0, with Mr. Waite abstaining on Item D.

- A. Brad W. Houck v. Transportation Cabinet (2018-012)
- B. Eric Lewis v. Justice and Public Safety Cabinet/Juvenile Justice (2018-208 & 2018-233) (Mediation)
- C. Michael Rider v. Cabinet for Health and Family Services (2018-217) (Mediation)
- D. Richard Waite v. Tourism, Arts and Heritage Cabinet/Fish & Wildlife (2018-250)
- E. Lisa Craigmyle v. Justice and Public Safety Cabinet/Corrections (2018-168) (Mediation)

**11. OTHER**

Mr. Sipek addressed the matter of Rodney Milburn v. Tourism, Arts and Heritage Cabinet, Department of Fish and Wildlife Resources, which was on the Board's agenda for February 2019. The matter was deferred due to neither Mr. Milburn nor his attorney appearing

for the oral argument. After a call to Mr. Milburn's attorney, the Hon. Ben Basil, it was found that the order had been inadvertently mailed to Mr. Basil's old address and was not forwarded. As such, the Board had properly allowed the oral arguments to be rescheduled to the April 12, 2019 meeting.

There being no further business, Mr. Haines moved to adjourn. Ms. Lawrence seconded, and the motion passed by acclamation. (11:41 a.m.)

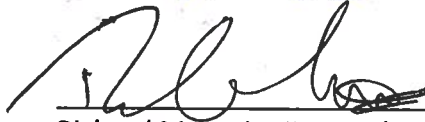
  
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Brian J. Crall, Chair


  
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Mark O. Haines, Vice Chair

  
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Beverly Griffith, Member

  
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William J. Byrley, Member

  
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Catherine J. Monteiro, Member

  
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Richard M. Waite II, Member

  
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Tanya Lawrence, Member

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2017-236**

**JOHN SHIELDS**

**APPELLANT**

**FINAL ORDER  
SUSTAINING HEARING OFFICER'S  
VS. FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER AS ALTERED**

**JUSTICE AND PUBLIC SAFETY CABINET  
DEPARTMENT OF CORRECTIONS**

**APPELLEE**

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The Board at its regular March 2019 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated December 3, 2018, Appellant's Exceptions and Request for Oral Argument, Appellee's Response, Oral Arguments, and being duly advised,

**IT IS HEREBY ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be altered as follows:

A. **Delete** Summary of Evidentiary Testimony paragraphs 13 and 14 and substitute the following:

13. The intent to dismiss letter also informed Shields that a report had been provided to the Warden concerning his access into the KOMS (Kentucky Offender Management System) records maintained by the DOC, revealing that he had looked up: 1) 27 offender photographs, 2) information on 17 inmates never in his electronics class, 3) information on six male offenders, 4) disciplinary reports on five inmates, 5) disciplinary reports on seven inmates never in his electronics class, 6) residential histories, relatives' information, and 7) demographic profiles on another four inmates never in his electronics class. The letter charged that after he obtained this information from KOMS, he would frequently discuss the information he obtained with other inmates. The letter further identified acknowledgements from several inmates that Shields had discussed with them criminal and personal information he obtained on KOMS about other inmates.



14. As a result of Shields' improper use of KOMS and discussions with other inmates concerning that KOMS data, he was issued a dismissal letter for being in violation of Corrections Policies and Procedures (CPP) 3.1, Code of Ethics, Section II. (B)(3), Conflicts of Interest, which prohibits "developing a relationship between staff and an offender other than that necessary in the normal conduct of business" and prohibits "any release of confidential information [without] the prior consent of the appropriate authority within Corrections." The policy further states that "failure to obtain prior approval may be grounds for disciplinary or other appropriate action." The letter also charged Shields with being in violation of KCIW Institutional Policy and Procedure (IPP) 03-02-01, General Guidelines for Staff, concerning "interaction with an Inmate," which prohibits discussion concerning "another employee or inmate with or in the presence of an inmate."

B. **Delete** Summary of Evidentiary Testimony paragraph 22 and substitute the following:

22. Shields testified that there were no food boxes at the Kentucky State Reformatory where he previously worked and that he did not know what they were. He described them as looking like a tackle box and that it was not until the issue arose of his storing the boxes for one of the inmates that he became aware that they were supposed to be kept in the dorm. He acknowledged that he was questioned by the Warden about a YouTube video he showed to some inmates concerning an inmate who was financially unable to attend her father's funeral. He testified that his purpose in showing the video was for the moral and emotional benefit of the inmates and to let the daughter of the man who died and the other inmates know that the staff cared about them.

C. **Delete** Finding of Fact paragraph 2 and substitute the following:

2. Shields went through the DOC Academy for training in DOC policies and procedures before starting his job duties and underwent annual training relating to his job responsibilities. Shields' training history documents that he had undergone extensive annual training in the DOC Code of Ethics. The training he received over the years consisted of both classroom and computer interactive modules. Even though he was a classroom teacher of the inmates, he had training in dealing with inmates in a professional manner and in security concerns.

D. **Delete** Finding of Fact paragraph 5 and substitute the following:

5. Shields denied that the information he looked up on KOMS was at the request of the inmates, but rather for his own information to vet students in his class or potential students. Inmate Elizabeth Turpin's statement that Shields looked up information on KOMS concerning other inmates for her, was supported by the Internal Affairs Investigation conducted by Cpt. Denham. Further, Cpt. Denham's review of the transaction logs of Shields' use of KOMS produced information that most of the offenders he researched were never in his class.

E. **Delete** Conclusion of Law paragraph 4 and substitute the following:

4. Shields argued that he did not knowingly violate a policy and that KCIW failed to train him on an unwritten policy he was alleged to have violated. This merits appropriate due process consideration whether disciplinary action should be imposed. However, Shields had served twenty years in the Department of Corrections and had received extensive training in the Code of Ethics, Standards of Conduct, and Professional Interaction of Staff with Inmates. The seriousness of the fact that the Appellant violated reasonable Department policy cannot be overlooked because he did not receive specific training about a "food box." The actions he took in storing the food box, regardless of his claimed lack of knowledge of what it was, violate the prohibition against favors for inmates. Similarly, the information he looked up and discussed with the inmates violates the standards of conduct prohibiting improper discussion of information regarding offenders with inmates without prior approval from an appropriate authority. It cannot be overlooked that the Appellant was obligated to the people of the Commonwealth of Kentucky to perform an essential job function in his capacity as a Corrections Education Specialist II, an educator of inmates at KCIW.

F. **Delete** Conclusion of Law paragraph 8 and substitute the following:

8. The preponderance of the evidence established that Shields improperly extended a favor to an inmate by agreeing to store an item of personal property of the inmate that did not belong in the classroom or its adjoining tool room that he controlled. Nor was his breach of the confidentiality of offender records a minor violation, but placed himself and the prison facility in jeopardy if he denied the favor for another inmate who became disgruntled over such a denial. Shields had to know that he was violating a highly sensitive and important security rule by agreeing to research disciplinary records of offenders and disclosing that information to inmates. The Appellant's argument that he was doing this for self-education to vet his students and potential future students does not stand against the evidentiary balancing test when measured with the testimony of Cpt. Denham, who established that the majority of the offender reports he accessed did not involve students in his class and the testimony that Shields was

looking up the information in response to inmates' personal requests. Warden Conover correctly noted that the record of Shields' transaction logs into the KOMS records over a period of time revealed that this was not a first-time occurrence.

**IT IS FURTHER ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer as Altered be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

**SO ORDERED** this 12<sup>th</sup> day of March, 2019.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPIEN, SECRETARY**

A copy hereof this day mailed to:

Hon. Samuel Hayward  
Hon. Angela Cordery  
Mr. Rodney E. Moore

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2017-236**

**JOHN SHIELDS**

**APPELLANT**

**VS.**

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER**

**JUSTICE AND PUBLIC SAFETY CABINET,  
DEPARTMENT OF CORRECTIONS**

**APPELLEE**

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This matter came on for an evidentiary hearing on May 17, 2018, and June 26, 2018, before E. Patrick Moores, Hearing Officer, at the offices of the Kentucky Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky. The proceedings were recorded by audio-video equipment pursuant to the authority found at KRS Chapter 18A.

The Appellant, John Shields, was present and was represented by the Hon. Samuel G. Hayward of the firm of Adams, Hayward & Welsh in Louisville, Kentucky. The Appellee, Department of Corrections (hereinafter "DOC"), was present and was represented by the Hon. Angela Cordery, legal counsel for the Justice and Public Safety Cabinet.

**I. STATEMENT OF THE CASE**

1. The Appellant, John Shields, timely filed his appeal on December 11, 2017, on the DOC's decision, stated in a letter dated November 16, 2017, from Janet Conover, Warden of the Kentucky Correctional Institution for Women (hereinafter KCIW), in Peewee Valley, Kentucky. Conover's letter stated that, pursuant to KRS 18A.095 and 101 KAR 1:345, Sections 1 and 2, he was being dismissed for lack of good behavior, and violation of CPP 3.1, Code of Ethics, and KCIW IPP 03-02-01, Section B(2), "General Guidelines for Staff," prohibiting discussion by staff members concerning an inmate in the presence of another inmate. The letter alleged that while he was employed as a Corrections Education Specialist II, Shields: 1) improperly stored in a tool room locker an inmate's "food boxes" containing personal items while the inmate was being placed into the Restrictive Housing Unit, 2) spent an improper amount of time with the same and another inmate during which he improperly discussed the status of other inmates, 3) he ignored inmates bringing items into his electrical training classroom to work on, and 4) that he would improperly use the internet for the unauthorized purpose of looking up disciplinary reports of

inmates and discuss them with other inmates. In addition, DOC charged him with other improper interaction and discussions of confidential information with inmates. The Warden's letter of dismissal further stated that pursuant to KRS 18A.032, Shields would not be certified on future registers for employment within the Kentucky DOC, unless the DOC so requested.

2. A pre-hearing conference was held before the Kentucky Personnel Board on February 1, 2018, at which the matter was scheduled for an evidentiary hearing on May 9, 2018. On March 23, 2018, the DOC filed a motion to reschedule the hearing due to a scheduling conflict involving Warden Conover and the hearing was rescheduled to May 17, 2018.

3. The evidentiary hearing was conducted on May 17, 2018, and, after the first day's testimony, was continued to June 26, 2018. The issue was whether Shield's dismissal by DOC was for just cause and was neither excessive nor erroneous. The burden of proof was on the Appellee to prove the dismissal was properly issued by a preponderance of the evidence. At the conclusion of the presentation of all the evidence, the parties were provided the opportunity to submit legal briefs on the evidence and argue the law on the matter.

## II. SUMMARY OF EVIDENTIARY TESTIMONY

1. The first witness for the DOC was **Elizabeth Turpin**, an inmate at KCIW, who testified that she enrolled in Shields' electronics class in 2017, that the inmates were allowed to study and work at their own pace, and that Shields would check their work to see what they were learning and that they were tested weekly on their progress. She described Shields as easy to get along with and noted that when she asked him to look on the correctional facility's computerized "Kentucky Offender Management System" (KOMS) to see if she had been written-up on a matter, he did so and informed her he did not find any write-up of charges against her. She introduced a written statement, dated October 13, 2017, in which she informed the DOC's investigator that Shields looked up records of other inmates for her, and she observed him look up records for other inmates, and would discuss their crimes. She testified that Shields would ask her about other prisoners, and seemed interested in the "social dynamics of the yard," inquiring about which inmates were the "power players." She further claimed that Shields was way too interested in her personal life, testifying that he asked her what her husband thought about her spending time with other women in the prison. She also accused him of being racist and homophobic concerning another inmate and on one occasion asked her, "when did white people become the new slaves?" She said that other inmates were often seen in Shields' office having private conversations with him.

2. Turpin testified that when it was learned that she had the personal interaction with Shields and had asked him to look up information on KOMS concerning other inmates, she was charged with violating Corrections policy by having a personal relationship with a staff member and, after determining she violated that policy, was issued fifteen days in segregation plus sixty days good time loss. She appealed her "conviction" by the adjustment officer to the warden, alleging that the relationship was pursued by Shields. She said she believed that Shields was in violation of an ethical duty not to discuss any inmate's personal matters with other inmates.

3. Turpin admitted that she considered Shields to be a good teacher and that she believed the role of a good teacher was to know some extent of personal information about the students. She further testified that the classroom was a "high-traffic area," that it would be important that Shields, as a teacher, would not want "bad apples" in the class, and that it was important for him to know who was in the area. Turpin stated that Shields told her that he would be interested in making her the tool clerk and that she considered the class an uplifting experience for her.

4. She testified that she was charged with the offense of having a relationship with Shields after he was dismissed, because it was determined she was responsible for his actions. However, she knew he had "relationships" with other inmates that asked him to provide them with information about inmates on KOMS and he would discuss it with the inmates. She said the warden did not seem interested in her position concerning Shields and said to her that the determination would stand against her. She introduced a written response appealing the charge against her and cited a KCIW policy that stated guidelines for interaction between staff and inmates. She testified that her interpretation of the events was that the prison staff was not supposed to discuss other inmates in the presence of an inmate, nor ask the sort of personal questions she was asked by Shields. She stated that she did not know what instructions Shields received when he came to work at KCIW and whether these type of personal questions were permissible at the men's institution, Kentucky State Reformatory, where he formerly worked.

5. **Debra Talbot**, an inmate at KCIW, testified that she was in Shields' class for eight months, where she worked on solar and wind-generated power subjects during the day at her own pace. She said that if she did not understand something, she would ask questions to Shields and he would use the blackboard to explain the answers.

6. Talbot testified that she had some food boxes, which she described as "honor" crates, that she wanted to keep her "property" in her boxes and that Shields was nice enough to store them for her, claiming that her locker was too small to hold them. She said the boxes looked like a tool box, were made of clear plastic, and that anyone could see through them and observe the contents. She said the boxes were allowed to the "honor" inmates to store food and personal items. She stated that she was an honor inmate and she used her box as a place to store her personal items. She testified that the items that she was accused of placing in the box, such as a curling iron and CD player, were incorrect and that the items listed as being improperly stored in the box were not her property.

7. Talbot testified that she received a disciplinary write-up on an unrelated matter and was subsequently written-up on a second Disciplinary Report when a training instructor, Jose Rodriguez, repeatedly observed her in an unauthorized area, which she claims happened when she went to see Shields about whether she could return to his class when she concluded serving her time for the disciplinary write-up. She testified that she had been assigned to work for Landscape Operations and was not aware she not supposed to be in the electrical classroom area where she was no longer assigned. She testified she was told by Rodriguez that inmates who were not

assigned to a class were not supposed to be "hanging out" in the education building and that she was unaware of such policy. Talbot testified that Shields always had an "open door" policy and that she went to see him to find out if she could get back in his class. She introduced a written statement given to one of the investigating officers, Lt. Michael Morrow, that, when she received the first write-up, she had given her honor box containing her personal possessions to Shields, who told her that he would store them for her until her 60 days' punishment of restrictive housing ended. She said that had she not stored them with Shields, the boxes would go to the property area and that she was concerned that she would not get everything back.

8. **Jose Rodriguez** is a KCIW staff member and training instructor, working for the DOC since 2012. He also worked with Shields at KCIW. He testified that he understood Shields was transferred to KCIW from the Kentucky State Reformatory, due to the downsizing of that facility, resulting in some of the education programs being moved to KCIW. He testified that when Shields was transferred to KCIW, Shields knew what was required from him as far as the institution's policies, and said if he did not understand a policy or had any questions about his responsibilities, he could always ask a supervisor.

9. Rodriguez testified that he prepared an Occurrence Report on Shields when he went to the tool room and observed two clear boxes that belonged to an inmate, one of which was padlocked. He stated that when an inmate loses her honor status and is moved into another dorm, she loses her privilege of having an honor box, which is supposed to remain in the unit. He said that Shields admitted to him that he was storing the boxes for inmate Talbot. Rodriguez noted in the Occurrence Report that Shields stated to him that he was not aware that inmates could not remove the boxes from the unit nor that they had to turn the boxes in when losing their honor status. Rodriguez testified that Talbot was clearly aware that she was going to lose the boxes, when she got Shields to agree to store the boxes. Rodriguez testified that the DOC policies state that the staff cannot do "favors" for inmates.

10. Another staff member, **Hayward Cross**, testified that when he was transferred to KCIW he did not receive any orientation training, however, he did undergo yearly "in-service" training. He described his relationship with Shields as good, but that even if Shields was not aware of the specific KCIW policy concerning the food boxes, he should have known that the institution's staff was not to do favors for inmates and that it was improper to store any personal items of inmates in a classroom facility. Cross also testified that he observed Shields mark an inmate as present in the class when that inmate was in segregation and could not be present. He said this resulted in improper payment to the inmate. He further testified that the staff receives considerable training annually on the DOC's Code of Ethics, which prohibits the staff from having a personal relationship or doing favors for the inmates, and that a staff member was not allowed to be in an area with an inmate or have communications with an inmate unless it was involved with the class or the job duties.

11. **Steven Lyon** serves the DOC as a Human Resources Administrator, and prepared the investigative leave letter on Shields while he was being investigated on allegations of misconduct for being involved in an improper relationship with an inmate. The letter, dated

October 16, 2017, was signed by HR Division Director Rodney Moore. Lyon testified that the purpose of the investigative leave is to give the investigators of a potential disciplinary action time to investigate and make their findings. He added that if there is no finding, the letter is purged from the employee's file.

12. Lyon testified that, two weeks later, he prepared a letter signed by KCIW Warden Janet Conover informing Shields of the intent to dismiss him for "lack of good behavior" for violation of 101 KAR 1:345, Sections 1 and 2. The letter stated that Shields had improperly "hidden" food containers of inmate Debra Talbot in his classroom, and those containers were improperly used to store various personal property items. The letter further informed Shields that an investigative interview with inmate Talbot disclosed that another inmate, Elizabeth Turpin, bragged that she could talk Shields into doing anything for her that she wanted, and that Turpin hung around Shields and talked to him alone in his office more than any other inmate in the classroom, although she had never observed anything inappropriate take place between Shields and Turpin. The letter stated that the charge concerning his conduct with Turpin was confirmed by another inmate, Betti Kern, who also stated that Shields told the inmates that they could bring other inmates' electrical items into the classroom for repairing.

13. The intent to dismiss letter also informed Shields that a report had been provided to the Warden concerning his access into the KOMS (Kentucky Offender Management System) records maintained by the DOC, revealing that he had looked up: 1) 27 offender photographs, 2) information on 17 inmates never in his electronic class, 3) information on six male offenders, 4) disciplinary reports on five inmates, 5) disciplinary reports on seven inmates never in his electronics class, 6) residential histories, relatives' information and 6) demographic profiles on another four inmates never in his electronics class. The letter charged that after he obtained this information from KOMS, he would frequently discuss the information he obtained with other inmates. The letter further identified acknowledgements from several inmates that Shields had discussed with them criminal and personal information he obtained on KOMS about other inmates.

14. As a result of Shields improper use of KOMS and discussions with other inmates concerning that KOMS date, he was issued a dismissal letter for being in violation of Corrections Policies and Procedures (CPP) 3.1, Code of Ethics, Section II. (B)(3), Conflicts of Interest, which prohibits "developing a relationship between staff and an offender other than that necessary in the normal conduct of business" and prohibits "any release of confidential information [without] the prior consent of the appropriate authority within Corrections." The policy further states that "failure to obtain prior approval may be grounds for disciplinary or other appropriate action." The letter also charged Shields with being in violation of KCIW Institutional Policy and Procedure (IPP) 03-02-01, General Guidelines for Staff, concerning "interaction with an Inmate," which prohibits discussion concerning "another employee or inmate with or in the presence of an inmate."

15. The dismissal letter further noted that he had signed an Internet Usage Agreement on July 2, 2010, which Lyon introduced into the record that stated, "use of the Internet or Email is for the facilitation of state business. The use of the Internet for . . . any other unauthorized purpose is prohibited." Lyon testified the agreement is gone over with each new employee and that special



emphasis is focused on the confidentiality requirements. The agreement signed by Shields alerts the employee that "unauthorized or improper use of the computer/internet system may result in administrative disciplinary action."

16. Lyon also introduced a Document of Understanding signed by Shields on July 2, 2010, which he testified is used to explain the policies of the institution, especially the Code of Ethics, to each new employee. He pointed out that paragraph 3 of the agreement emphasizes that the employee understands that "during my period of employment, I shall be expected not to engage in private business or fraternization with an inmate or his family." Section 3.b. provides, in pertinent part, that the employee "shall not accept from or give to any inmate personal favors." Paragraph 8 in the agreement signed by Shields states that "I understand that the institution and its employees and agents have a duty to protect the privacy of inmates and staff, which means I have a duty to a. Refrain from revealing any information of a personal nature about any individual staff member or inmate, which is not a matter of public." Paragraph 10 of the agreement signed by Shields states, "I understand that the institution provides its employees a written code of ethics. This Code of Ethics is available to all employees." The agreement concludes with Paragraph 11 in which Shields signed that he understood he had a "responsibility to: a. Familiarize myself with current policy and procedure as it affects my job responsibilities. [and] b. Comply with current policy and procedure as I discharge my job responsibilities on a daily basis."

17. **Beth Moore** is a Systems Consultant with DOC and is responsible for all the data input into KOMS. She testified that the computerized data system is used to document "everything you would want to know about an inmate," including the offender's security profile, sentencing information, family history, programs applicable to the offender, and the offender's movement within DOC. She testified that all DOC reports are entered into KOMS. DOC also documents all transactions involving user searches into KOMS concerning a specific inmate.

18. At the start of the second day of receiving evidence, **John Shields** was sworn in to testify. He stated that he started employment with DOC at the Kentucky State Reformatory on January 1, 1998, as an Electronics Instructor, and he was transferred to KCIW in October 2016. He testified that he graduated from college in 1988 and that his first job was with the United States Navy. In the early 1990s, he became a self-employed electrical engineer and obtained a teaching certificate from the University of Kentucky. His first teaching job was at the Nelson County High School in Kentucky in 1995.

19. Shields testified that when he started his employment with DOC, he received instruction on security issues, classroom security, and how to protect the tools used in the classroom. He said he went to the DOC academy for two weeks, consisting of classroom and computer instruction, which included training in the Code of Ethics and supervising inmates, and that, thereafter, he received annual training and occasional computer modules of training.

20. Shields acknowledged his use of KOMS and signing a confidentiality agreement that he would not abuse the confidential information obtained from his use of the system. He recognized that he was personally accountable for contraband, his dealing with inmates, and how to act as a professional correctional employee. He stated that his management of work relations with the inmates covers his ability to relate and act professionally. He was shown a history of his training record from DOC that documented that he had been trained in the Crim.cast computer system. The Crim.cast computer system consisted of training modules on professionalism working with coworkers and inmates, supervision of offenders, the Code of Ethics, and prohibition of sexual activities with offenders. He was tested on the subjects on which he received training. He said the Crim.cast system required him to sign-in, select the module on which he was to receive training, study the module, and answer questions. He said he usually went straight through the available training rather than picking and choosing the topics he desired to study. The training documentation also disclosed his training in security awareness, accurate time reporting, self-defense and safety, KCIW policies, and anti-harassment awareness.

21. Shields testified that he received classroom training in the Code of Ethics and Standards of Conduct. He stated that the training on dealing with inmates stressed the point that staff is not supposed to have a relationship with inmates. He admitted that the prohibited behavior was to prevent security issues, that each employee was required to keep inmate records confidential, and that the staff was required to sign a Confidentiality and Security Agreement before beginning their employment with DOC. Shields said that to his knowledge he had not violated any of the provisions of the Code of Ethics.

22. Shields testified that there were no food boxes at the Kentucky State Reformatory where he previously worked and that he did not know what they were. He described them as looking like a tackle box and that it was not until the issue arose of his storing the boxes for one of the inmates that he became aware that they were supposed to be kept in the dorm. He acknowledged that he was questioned by the Warden about a YouTube video he showed to some inmates concerning an inmate who was financially unable to attend her father's funeral. He testified that his purpose in showing the video was for the moral and emotional benefit of the inmates and to let the daughter of the man who died and the other inmates know that the staff cared about them.

23. Shields testified that just because he listened to any of the inmates did not mean that he gave them any information. He explained that his reason for allowing inmates to work on personal property in his class was for training purposes and that the student inmates repaired inmate personal property on nearly a daily basis. He further testified that if an inmate was being placed in isolation or segregation, he understood that the classroom educators were allowed to keep the inmate's personal property for safe-keeping if they were going to return to the class. He said he did not hide anything and that the lockers he used to store the inmate's personal property did not have any locks on them. He said the handling of an inmate's personal property never came up until the issue concerning the food box. He claimed the responsibility for the storage of the food box should have been the concern of the dorm staff, who should have prevented this from happening.

24. Shields testified that he used the KOMS computer system to obtain information about the offender's records inside and outside KCIW, which was to vet his students, as it also documented their education level. He admitted that some of the inmates would ask him about information on other inmates, but claimed he never gave any of that information out to any inmate, and insisted that he never knowingly violated the Code of Ethics prohibition on discussing KOMS information with an inmate.

25. Shields testified that he never had any problems in any of these areas when he worked at KSR except one time when he was written-up by another guard in retaliation for correcting the guard on the prison's drug policy. He said that when he worked as a teacher at KSR, inmates were allowed to keep their personal property in the classroom. He was not aware about the food boxes used at KCIW, as he was never explained the policy or purpose of the food boxes. Shields said that he had received training in psychology and that he did not believe he was being manipulated or set up by the inmates. He said he thought it was just a deep plastic box. He further said he had no knowledge on what information the dorms had concerning an inmate's personal property. He acknowledged that part of his job duties were to control the inmates' collection of contraband and that when he looked into inmate Talbot's transparent plastic box, he observed what he described as personal items and did not see any contraband.

26. Donna McClamroch has been employed at KCIW since 2013, where she supervises student inmates and the classes. Part of her job is to assure the classes are being properly provided to the inmates and that the inmates are attending the classes. She said that when she was hired she underwent three weeks of training before she began teaching, in matters concerning the prison regulations, code of ethics, security measures and inmate management. She said she did not have to undergo any weapons training and that being involved in a prison environment required less paperwork, no involvement with parents, and much less interrelationship with the students.

27. McClamroch testified that she worked with Shields at KSR and, when he came to KCIW, he was one of her teachers. She stated that the inmate students knew that it was a privilege to take a class and are aware that they can easily be removed from a class. She said the duties of each teacher were typically uniform and that everyone who works in Corrections is conscious of the requirements concerning security. She said that the inmate students are allowed to bring a pencil, paper, and textbook to class, but they are not allowed to bring any personal property, although it was allowed at KSR where the inmate was allowed to work on and repair their personal property. She further testified that it was not proper for an instructor to keep an inmate's personal property while the inmate is in segregation. She testified that she also did not know about food boxes nor what was allowed to be stored in them.

28. McClamroch works at KCIW two days a week, has been associated with Shields since 2014, and she would talk with him every morning when they arrived at work. She testified that he did a good job working with the student inmates and, in 2017, his class was featured in a television program. She further testified that he always screened prospective students, as he

always wanted to know the inmates educational level, which he could learn by looking them up on KOMS. She said his classes were always full and that he always had a waiting list. She said she never heard any complaints about his work.

29. McClamroch testified that she never saw any written policy or institutional rule that a teacher could not keep a student's personal property. She said every year they received training on DOC and KCIW policies and procedures, but did not recall receiving any training on food boxes. She also acknowledged that an inmate could be removed from a class for any reason.

30. **Cpt. Rebecca Denham** has worked for KCIW for six years and has served in the Internal Affairs office for the past three years. She testified that she has had internal affairs training, which included how to conduct and write up an investigation. She said an investigation was initiated on Shields when Rodriguez found two food boxes containing an inmate's personal property in Shield's classroom. She described the food boxes as being available for honor students only and that it is important for accountability purposes to know each inmate's personal property. She said she was instructed by Warden Conover to search Shield's classroom and she found numerous personal property items in Talbot's food boxes, which were supposed to be kept with her personal property in the dorm. She testified that the proper procedure when an inmate is placed in segregation is to inventory their personal property, which is returned to them on their release.

31. Cpt. Denham also reviewed all of Shields' log in access into the KOMS entries, including the date and time he logged in, the offender number he searched, the transactions he reviewed and how many inmates he searched. She testified that Shields had 93 incidents of looking up offender photographs and information. She said that the first thing she did on receiving the KOMS transaction log was to contact Rodriguez, they then conducted a search of the food boxes in the electronic class tool-room and the electrical classroom, and reported their findings to Warden Conover in a report dated October 25, 2017. Among the items they reported finding were a hotpot, two curling irons, three CD players, six headphones, a hair dryer, two ear buds, cloth for knitting, two power plugs, and a cup of nails, screws, nuts and bolts. She then interviewed inmate Talbot and Shields. She testified that Shields acknowledged he told Talbot that it would not be a good idea to store her food boxes in the classroom while she was in restricted housing, but that he agreed to store them in the tool room, which was also under his charge. He said he did not see anything wrong with the storing of her food boxes, as she would be returning to his class. Cpt. Denham reported in her interviews that the other electronic gadgets found in the classroom belonged to other students who were working on them as part of their classroom training. Cpt. Denham reported to Warden Conover that their investigation revealed that the electronic gadgets found in the classroom did not belong to any inmate that had participated in Shields' class.

32. She further testified that from her interview with Talbot, it was apparent that Shields had looked up some offender information on KOMS at Talbot and Turpin's request, along with requests from other inmates. She testified that Shields admitted looking up more photographs out of curiosity but denied looking up disciplinary reports. However, her review of the KOMS transactions showed that Shields looked up disciplinary reports of inmates that were in his class as well as inmates that were not in his class. Her report indicated that her interviews of some of the

inmates that Shields looked up disciplinary reports for were consistent with her review of Shields KOMS account information demonstrating that Shields did in fact look up disciplinary report information and gave the information to inmates in his class. She testified that her investigation revealed that Shields had violated the Code of Ethics prohibition against developing a relationship between staff and an offender other than that necessary in the normal conduct of business. He also released confidential information without the prior consent of the appropriate authority within DOC. She also determined that Shields violated KCIW IPP 03-02-01, section B.2., which prohibited staff from "discussing another employee or inmate with or in the presence of an inmate." Cpt. Denham testified that the procedure is there to save lives and that once an inmate has managed to get staff to look up case information on another inmate, it can create a negative situation.

33. **Warden Janet Conover** has worked with the DOC for more than 28 years and has been the Warden at KCIW since January 2010. She acknowledged that she made the decision to terminate Shields. She testified that she considered the situation involved, what happened, and the violation of DOC' and KCIW's policies and procedures. She stated that the policy is provided to set boundaries of employee actions. She said that Shields was improperly looking up matters he had no business looking into, particularly when it involved looking up information at the request of inmates concerning other inmates, and that it had nothing to do with his job. She said her review of Shields' training within DOC revealed that he had over twenty years of obtaining knowledge about the Code of Ethics. She also said he failed to report the violations of some of the inmates, instead "pushing it under the rug."

34. Warden Conover testified that the bottom line on Shields agreeing to store the food boxes of inmate Talbot was that she (Talbot) wanted to hide property that she did not want the institution to know she had. The property stored in the boxes had nothing to do with her electrical training and the tool room is not for storage of personal property. She said that the problem with agreeing to store an inmate's property is that if other inmates found out about it, they would insist on the same treatment, and would create problems if their request was denied. She stated that there is no need for a staff member to look up disciplinary reports as a favor to the inmate. Warden Conover said the decision she had to make for disciplining Shields was between doing nothing, issuing a written reprimand, suspending Shields, or terminating him. She determined that he had lost control of his responsibilities as a teacher of inmates and of his classroom when he started looking up personal information of other offenders for inmates and discussing his findings with them.

35. Warden Conover testified that Shields had 18 years of training when he came to KCIW from KSR, and that DOC policy states that male and female offenders are not to be treated differently. She acknowledged that there is no written policy concerning the food boxes. The problem for Warden Conover was that inmate Talbot was trying to hide personal property in the boxes that she did not want the institution to know she had. She testified that it is the responsibility of the property officer to audit the property of an inmate being restricted, pack up the property, and store it during the inmate's restriction. The institution systematically lists all property, which goes to the property room for safe keeping. She said that this is consistently done within KCIW and that the staff is consistently trained about this procedure.

36. Warden Conover testified that the reason she decided to terminate Shields was that he was an 18-year veteran of DOC when he came to KCIW. She said that he should have thoroughly known the Code of Ethics and that the violation of providing favors to inmates by looking up disciplinary reports of other inmates for them was not a first-time occurrence.

37. **Marsha Bledsoe** has worked for DOC since March 1999 and has been a supervisor at KSR where she worked with Shields since 2002, although it had been eight years since they last worked together at KSR. Bledsoe testified that there was no written requirement against storing personal property for inmates.

## II. FINDINGS OF FACT

1. The Appellant, John Shields, began working with the Department of Corrections in 1998 as an instructor in electrical training at Kentucky State Reformatory and was transferred to the Kentucky Correctional Institution for Women (KCIW) in October 2016 to work in the same capacity, training inmates in a skill that could be utilized for occupational placement upon their release from prison.

2. Shields went through the DOC Academy for training in DOC policies and procedures before starting his job duties and underwent annual training relating to his job responsibilities. The training history of Shields documents that he had undergone extensive annual training in the DOC Code of Ethics. The training he received over the years consisted of both classroom and computer interactive modules. Even though he was a classroom teacher of the inmates, he was considered a Correctional Officer and had training in dealing with inmates in a professional manner and in security concerns.

3. Shields, McClamroch, and Cross all had many years of experience with the DOC before being transferred to KCIW, and each said they had no training about the food boxes that were allowed to inmates that had earned honor status. However, Warden Conover said they were also not hires off the street and that their records documented that they had received extensive training in DOC policy and procedure. Plus, upon their hire with KCIW, they underwent annual training which included emphasis on the Code of Ethics, Standards of Conduct, and General Guidelines for Staff.

4. In his position of trust in dealing with the inmates, an investigation conducted by an Internal Affairs Officer for KCIW, Cpt. Rebecca Denham, produced evidence that Shields did favors for some of the female inmates, at their request, by conducting research on other inmates' disciplinary records on the computerized DOC records system known as the Kentucky Offender Management System (KOMS), and then subsequently discussing his findings with them.

5. Shields denied that the information he looked up on KOMS was at the request of the inmates, but rather for his own information to vet students in his class or potential students. However, the Internal Affairs investigation conducted by Cpt. Denham produced interviews with

numerous inmates that told her he looked up the information on KOMS at their request and discussed his finding with them. Further, Cpt. Denham's review of the transaction logs of Shield's use of the KOMS produced information that most of the offenders he researched were never in his class.

6. The investigation into Shields' conduct with the inmates was initiated when another employee, Jose Rodriguez, found two food boxes stored in the tool room, which Shields admitted he was storing for an inmate who had been placed in disciplinary segregation and restricted housing. Shields wrote up an Occurrence Report on his discovery of the food boxes and personal property stored in the tool room following which Warden Conover instructed Cpt. Denham to investigate.

7. The subsequent investigation of the electrical classroom revealed a number of personal property items improperly stored in the classroom, and interviews of inmates in Shields' class disclosed the requests made of him by inmates to look up the information about other inmates.

8. As a result of the investigation conducted by Internal Affairs of KCIW, Shields was charged with being in violation of CPP 3.1, Code of Ethics, Section II. (B)(3), Conflicts of Interest rule prohibiting "developing a relationship between staff and an offender other than that necessary in the normal conduct of business" and prohibiting "any release of confidential information [without] the prior consent of the appropriate authority within Corrections." The policy further states, "failure to obtain prior approval may be grounds for disciplinary or other appropriate action." The letter also charged Shields with being in violation of KCIW IPP 03-02-01, General Guidelines for Staff, concerning "Interaction with an Inmate," prohibiting discussion concerning "another employee or inmate with or in the presence of an inmate."

9. A Document of Understanding signed by Shields on July 2, 2010, is used to explain the policies of the institution, especially the Code of Ethics, to each new employee. Paragraph 3 of the agreement emphasizes that the employee understands that "during my period of employment, I shall be expected not to engage in private business or fraternization with an inmate or his family." Section 3.b. provides, in pertinent part, that the employee "shall not accept from or give to any inmate personal favors." Paragraph 8 states, "I understand that the institution and its employees and agents have a duty to protect the privacy of inmates and staff, which means I have a duty to . . . [re]frain from revealing any information of a personal nature about any individual staff member or inmate, which is not a matter of public." Paragraph 10 states, "I understand that the institution provides its employees a written code of ethics. This Code of Ethics is available to all employees." The agreement concludes with Paragraph 11, in which Shields signed that he understood that he had a "responsibility to [f]amiliarize myself with current policy and procedure as it affects my job responsibilities and [c]omply with current policy and procedure as I discharge my job responsibilities on a daily basis."

10. The findings of the investigation led to the Warden making the disciplinary decision to terminate Shields. Warden Conover testified that, regardless of the institution within DOC, male and female offenders are not to be treated differently. Warden Conover terminated Shields for lack of good behavior pursuant to KRS 18A.095 and 101 KAR 1:345, Sections 1 and 2.

### III. CONCLUSIONS OF LAW

1. The function of this hearing is to determine the facts and whether the Appellant's due process rights were protected, and whether the Appellant's dismissal is supported by a preponderance of the evidence, which, taken alone or in light of all the evidence, has sufficient probative evidence to induce conviction in the minds of reasonable men. *Commonwealth of Ky. v. Bridewell*, 62 S.W.3d 370 (Ky. 2001).

2. Pursuant to KRS 18A.095(1), a classified employee with status shall not be dismissed, demoted, or otherwise penalized except for just cause. 101 KAR 1:345, Section 9, provides that disciplinary actions may be imposed on a merit employee for "lack of good behavior or the unsatisfactory performance of duties."

3. The focus of the evidence presented was on whether Shields' conduct violated DOC policies and whether he was performing his job duties so inappropriately as to justify his dismissal. The Kentucky Supreme Court addressed the issue of staff conduct in the prison environment, stating in pertinent part:

In all societies, there is a line, or a "seam," between appropriate conduct and inappropriate conduct. Sometimes it is a broad line, sometimes thin. This line, or "seam," is defined or established by law. And by our interpretive rulings, this court can more clearly define, or inadvertently obscure, or even move the line, or "seam," characterizing conduct in our society. Thus, we should always realize that every ruling we make, or "seam" we define, obscure, or adjust, has a composite effect, however large or small, on the "efficiency" of the society we live in. In this sense, it is important to note that society has looked (and is looking) for alternative programs in the corrections area with consistent objectives of punishment and rehabilitation in order to lower our incarceration rate . . . Having a great stake in the fortunes of tomorrow, we should not be inclined to fashion rules that unduly hinder, or impede, an honest search for solutions, absent the command of law.

[*Rowan County v. Sloas*, 201 S.W.3d 469, 479-480 (Ky. 2006)]

4. It cannot be overlooked that the Appellant was obligated to the people of the Commonwealth of Kentucky to perform an essential job function in his capacity as a Correctional Officer and educator of women inmates in the correctional complex. Shields argues that he did not knowingly violate a policy and that KCIW failed to train him on an unwritten policy, he was



alleged to have violated. This merits appropriate due process consideration whether disciplinary action should be imposed. However, Shields had served twenty years in the Department of Corrections and had received extensive training in the Code of Ethics, Standards of Conduct, and Professional Interaction of Staff with Inmates. The seriousness of the fact that the Appellant violated reasonable Department policy cannot be overlooked because he did not receive specific training about a "food box." The actions he took storing the food box, regardless of his claimed lack of knowledge of what it was, violate the prohibition against favors for inmates. Similarly, the information he looked up and discussed with the inmates violates the standards of conduct prohibiting improper discussion of information regarding offenders with inmates without prior approval from an appropriate authority.

5. In a prison environment, with employees and inmates relying on the rules for their own security, it is very important that the staff follow the chain of command and the prison rules. The function of the services provided at this detention facility is very serious to the people of the Commonwealth of Kentucky who entrusted the inmates to the staff of the facility to provide for the safety and welfare of the inmates and to the people of the Commonwealth, for which the taxpayers of the Commonwealth provide their pay for its implementation. The duties and responsibilities given to the staff are reasonable and clearly documented by the Legislature in the statutes and regulations, and by the Cabinet in its institutional policies. The employees are trained and frequently reminded of these rules, which are not to be ignored.

6. Shields was in no position to wall himself off from following his duty to the prison, the inmates, and people of the Commonwealth of Kentucky. In the position of utmost security and responsibility assigned to him by the Commonwealth and the DOC, Shields had a responsibility to keep himself informed of the job responsibilities and policies of doing his appointed duty. Shields acknowledged this responsibility when he signed the Document of Understanding. He is not in a position that affords him the opportunity to blame the fact that he did not receive specific training concerning his handling of an item of personal property of an inmate to make him not be accountable for his actions. His ability and job performance is noted on the record.

7. This Hearing Officer believes, under the authority of 101 KAR 1:345, Section 1, *supra*, the Commissioner of the DOC and the Prison Warden must be allowed to exercise some discretion in determining appropriate actions to be taken in disciplinary proceedings, particularly where it is shown that the decision was supported by sound decision based on the investigation conducted and evidence presented, and not in violation of the Department's policy or the laws of the Commonwealth of Kentucky. The evidence establishes that appropriate consideration was given by the Warden to all the circumstances, and that the seriousness of the incident justified the disciplinary action against the Appellant.

8. The preponderance of the evidence established that Shields improperly extended a favor to an inmate by agreeing to store an item of personal property of the inmate that did not belong in the classroom and its adjoining tool room that he controlled. Nor was his breach of the confidentiality of offender records a minor violation, but placed himself and the prison facility in jeopardy if he denied the favor for another inmate who became disgruntled over such a denial.

Shields had to know that he was violating a highly sensitive and important security rule by agreeing to research disciplinary records of offenders and disclosing that information to inmates. The Appellant's argument that he was doing this for self-education to vet his students and potential future students does not stand against the evidentiary balancing test when measured with the testimony of Cpt. Denham, who established that the majority of the offender reports he accessed did not involve students in his class and that several inmates gave her statements that Shields was looking up the information in response to their personal request. Warden Conover correctly noted that the record of Shields' transaction logs into the KOMS records over a period of time revealed that this was not a first-time occurrence.

9. After 1) weighing the evidence, 2) reviewing the appropriate statutes, regulations and institutional policies, and 3) balancing the explanations provided and their supporting arguments, it is the conclusion of this Hearing Officer that the penalty of the dismissal imposed was appropriate and for just cause.

### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **JOHN SHIELDS V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, (APPEAL NO. 2017-236)** be **DISMISSED**.

### **NOTICE OF EXCEPTION AND APPEAL RIGHTS**


Pursuant to KRS 13.B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, § 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal, a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each Party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

**ISSUED** at the direction of **Hearing Officer E. Patrick Moores** this 3rd day of December, 2018.

**KENTUCKY PERSONNEL BOARD**



**MARK A. SIPER**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. Samuel G. Hayward  
Hon. Angela Cordery